Senate Energy and Technology Committee Testimony of Rod Williamson Regarding SB437 (S-2)
May 4, 2016

Chairman Nofs, Members of the Energy and Technology Committee, thank you for giving me the opportunity to testify this morning. My name is Rod Williamson and I am the Global Energy Category Manager for Dow Corning Corporation and a member of the Michigan Manufacturing Association.

There are 3 key areas regarding SB437 that I would like to discuss: electricity retail choice, the IRP process and competitive rates.

First regarding retail choice:
Despite the complexity of the legislation before you, we think there is a fundamental question about the future of retail choice market in Michigan. That question is: can you apply to the choice market the same rules that govern regulated utilities and still have a functioning choice marketplace? We believe the answer is "no." Therefore, if as a matter of public policy, this Committee wants to preserve access to the choice market for those entities now being served by it, it must not regulate it in such a way.

Continued access to the choice market in Michigan is of great importance to Dow Corning, as it is to many Michigan manufacturers. Dow Corning has two facilities in Michigan on retail choice and another facility in the queue. We save over $5M a year by purchasing our electricity supply through retail choice versus buying that supply from the utility. Dow Corning works with our AES to develop a supply plan. Purchasing supply from an AES gives us flexibility. We have the ability to lock in our energy price several years ahead or purchase it in the real time market. We have a mix of capacity supply from bilateral contracts and the MISO capacity auction. However SB437 as drafted eliminates that flexibility and mandates how an AES must purchase capacity to serve its customers.

We hear arguments that the AES's are not building capacity, they are simply using the excess market capacity and therefore the utility full service customers are somehow subsidizing the retail choice customers. This is not true. For starters, ALL customers paid millions of dollars to cover the stranded cost of the utility generation when retail choice began. Secondly, between 2000-2008 when we had full retail choice, third party marketers built several thousand MWs of new natural gas base load generation in Michigan. Then in 2008 the energy legislation capped the choice market that could be served by an AES to only 10%. As a result the third parties have sold most of that generation they built back to the utilities. So a large portion of the excess capacity in the Michigan market came from the merchant developers to begin with.

Some have also argued that MISO capacity market prices have been too low and would not result in new generation. Now we are hearing that the *increasing* MISO capacity market prices are a sign there is a problem. In reality this is a sign that the market is working. We went through a transition from full regulation to an open retail choice market, the utilities were paid stranded cost for their generation and the excess generation in the market kept capacity prices low. Now as capacity is being retired, capacity prices are moving higher. But instead of letting the market work, the bill as drafted would force the AES's to act like a utility that has a guaranteed 90% of the market and regulated cost recovery. It would immediately and significantly limit AES's access to the MISO capacity market which is the only capacity market that requires sellers to participate, has market rules, market oversight and customer cost protections. The bill will force the AESs to either build generation without any of the same guarantees of a customer base like the utilities or bilaterally contract for that capacity where there is very limited public service commission oversight or cost control. A market in which AES's are forced to buy from sellers who are under no obligation to sell is not a free market. The sellers will have control. It simply does not work to apply regulated utility rules to a competitive market.

However, we understand and support the desire to ensure that there is a reliable electricity market for all customers. MISO's most recent Transmission Expansion Plan (MTEP15) forecasts that the reserve margin will potentially fall below the Planning Resource Margin Requirement of 14.3% beginning in 2020. But the further the forecast looks into the future the more uncertainty exists; and we have seen prior shortfall estimates disappear. We agree that the current MISO one year capacity auction is not perfect. The solution, however, is to work with MISO on their Competitive Retail Solution to develop a better market, not to apply utility regulation to the market like SB437 as drafted proposes to do. We believe a competitive market provides the best pricing and will provide adequate reliability if transparent and appropriate price signals are provided.

SB437 also establishes a generation capacity service fee that any customer electing to take retail choice service would have to pay for 10 years. There are two major problems with how this is structured. First of all the only time a fee like this should even be considered is if a customer chooses to take retail choice and there is no queue of customers waiting. If there is a queue of customers waiting to get on retail choice, then any customer load leaving the queue for retail choice is replaced with customer load returning to the utility. Thus there is no utility stranded generation cost that the customer leaving for retail choice would need to pay because the customer returning will pay those cost. The second major problem is that the generation capacity service fee is structured to recover the utilities complete fixed cost of generation. This includes a lot of costs and is not the same as MISO market capacity costs. Generators within the MISO market recover fixed costs through both the MISO energy rates and the MISO capacity rates. Therefore, when a customer is supplied under retail choice they are paying the market rate for generation fixed cost through both the energy and capacity rates. However the proposed utility generation capacity service fee establishes a capacity rate based on all of the utilities' fixed generation costs. This again is trying to force utility-type regulation into the competitive MISO market.

Regarding the IRP process:
We strongly support the use of an Integrated Resource Planning process. However there are a few issues that we believe need to be corrected to ensure the IRP process results in the best new resources. There must be a process that not only allows non-utility power producers to participate, but levels the playing field for their participation by ensuring they have a legitimate chance at being considered. For instance, Sec 6t(6) allows the utility to set all the criteria that must be met in order for the proposal to be considered in the IRP. At a minimum the criteria needs to be reviewed and approved by the public service commission as part of the IRP process. An additional area of concern is Sec 6t(17) which appears to require the commission to include in the utility rates all reasonable and prudent costs approved in the IRP with no need for the investment to be used and useful. Even though the projects are reviewed and approved in the IRP, there still needs to be a requirement that the facilities are functional before they get cost recovery.

Finally regarding competitive rates, there are 4 items I would like to quickly address:

1) Sec 11(1) of SB437 requires the commission to ensure that the cost of providing service to each customer class is based on the allocation of production-related costs using the 75-25 method of cost allocation. As a technical correction, I believe this was meant to reflect the current production-related costs method of 75-0-25. Although we still believe, as many others have testified – including expert witnesses from the utilities, ABATE, and individual companies – that the 100-0-0 method is the method that provides the best cost of service allocation on production related cost, we appreciate the Chairman at least codifying the 75-0-25 cost allocation formula in the bill. We will continue to work to drive toward the fairest cost allocation possible.

2) Sec 11(1) only requires the commission to ensure that electric rates are equal to the cost of providing service to each customer class. It is just as important that natural gas rates are set equal to the cost of providing service by class to ensure we have competitive rates.

3) The utilities have shown a fairly consistent pattern of earning more than their authorized rate of return over the last several years. One of the factors contributing to this is the 2008 energy legislation change in Sec 6a.(1) allowing utilities to use projected cost when filing for a rate increase instead of using actual costs and only adjusting for known and measurable differences. We believe this needs to be fixed and utilities should be required to use actual costs in their rate case filings.

4) Sec 6a.(12) REQUIRES the commission to approve revenue decoupling or a rate design for both natural gas and electricity for decreases in sales associated with energy efficiency, demand-side programs and other waste reduction programs. Although we understand the concept and issue trying to be addressed here and strongly support energy efficiency and demand response there needs to be customer protections in place before just automatically increasing rates. For instance as long as the utility is earning more than its authorized rate of return there should not be any increase in rates from this revenue decoupling mechanism or rate design. Additionally Sec 6a.(13) allows the commission to approve a revenue decoupling provision or rate design that automatically adjust for increases and decreases in sales for any reason. This should not be allowed. All this does is provide a guaranteed level of sales to the utility will introducing even more rate uncertainty to the customer.

In summary, although there are some good provisions within SB437 such as the establishment of an IRP process and the elimination of self-implemented rates we are opposed to SB437 as written given the major issues discussed, but we remain willing to discuss possible solutions.